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August 25, 2015

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Comments on Notice of Proposed Rulemaking for Part 723, Member Business Loans - RIN 3133–AE37

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments regarding the National Credit Union Administration (NCUA) Board's proposed changes to its member business lending (MBL) rule. CUNA represents America's credit unions and their more than 100 million members.

Credit unions have a very well established history of making loans to members for business purposes. In fact, some of the first credit unions in the United States were organized to lend for business purposes. This activity is fully consistent with credit unions' mission to promote thrift and provide access to credit for provident purposes. While not the largest portion of credit union lending, small business lending is the fastest growing segment by a significant margin. Many aspects of this proposal would remove barriers to credit union small business lending and enable credit unions to better meet the lending needs of their small business members. We applaud the approach this proposal takes and encourage NCUA to finalize it taking into consideration the improvements and concerns suggested in this letter.

The proposed MBL rule would overhaul NCUA's current MBL regulation in Part 723 by shifting from a prescriptive regulation that contains many detailed requirements to a principles-based regulation that gives credit unions more flexibility in the construction and operation of an MBL or commercial lending program that best fits their members' needs. CUNA supports NCUA's approach because it simplifies the regulation and removes many onerous business lending restrictions in the current rule not mandated by the Federal Credit Union Act (FCUA). The prescriptive approach may have been appropriate in the early years of business lending; however, in spite of the FCUA limitations and this prescriptive approach, credit unions across the country have developed robust commercial lending programs with experienced management and sound lending practices. Removing most of the specific requirements that currently require waivers, including the personal guarantee requirement, and lifting all unnecessary and arbitrary limits on construction and development (C&D) loans would ultimately allow credit unions to better serve their communities and members.

Summary of Comments Addressed In This Letter

CUNA's comments expressed in this letter can be summarized as follows:

- CUNA supports the change from the current prescriptive approach to a more principle-based methodology;
- NCUA should release and permit comment on the supervisory guidance prior to the issuance of the final rule. The absence of supervisory guidance creates uncertainty that makes it impossible to fully assess the proposed rule's potential impact on credit unions;
- NCUA should detail the minimum requirements that are acceptable for establishing a safe and sound member business lending program;
- CUNA supports the elimination of all prescriptive requirements necessitating waivers. Eliminating these requirements should give credit unions much needed regulatory relief;
- NCUA can and should go much further than this proposal to remove barriers to credit union small business lending. In particular, NCUA should revisit its interpretation of the exemption for those credit unions with a "history of primarily making" or "chartered for the purpose of making" member business loans;
- CUNA supports the presentation of the MBL cap as a multiple (1.75 times) of net worth up to the amount necessary to be well capitalized, which is in better conformity with the statutory language for the MBL cap (Note: This is **NOT** an increase in the cap nor is it an "end around" Congress);
- CUNA generally supports the new definitions including the newly created definition of "commercial loan" that helps distinguish those loans subject to the MBL cap from commercial loans that invoke the safety and soundness provisions. CUNA expresses reservation on the requirement of the credit-risk rating system that may not be appropriate or necessary in a commercial loan policy;
- There is concern over the newly imposed duties on the already heavily burdened volunteer credit union boards, particularly in light of the absence of guidance by the NCUA on specific requirements;
- CUNA supports the exemption for credit unions that hold a de minimis number and amount of "commercial loans," but believes the small creditor exemption could be improved to allow all credit unions, regardless of asset size, to take advantage of the exemption for de minimis MBL portfolios;
- CUNA supports giving State Supervisory Authorities (SSA) maximum flexibility for purposes of maintaining existing state regulatory schemes. CUNA is further concerned the rule does not contemplate necessary training and resources needed for SSAs to properly implement the proposed rule;
- NCUA must provide consistent training and guidance to examiners as part of the implementation of this rule since the rule will require more thorough examination of loans and policies by examiners; and
- NCUA should leave a waiver in place for its single borrower limit.

The Absence of Supervisory Guidance Creates Uncertainty that Makes it Impossible to Fully Assess the Proposed Rule's Potential Impact on Credit Unions

CUNA's support of this proposed rule is tempered by two major concerns.

First, because many of the current regulatory restraints would be removed from Part 723, NCUA will issue guidance that details the parameters of a safe and sound commercial lending program and many other possible examiner-driven requirements that are not detailed in the proposed rule. This guidance will detail many of the standards credit union examiners will use when reviewing commercial lending programs and thus stands in the place of the current prescriptive requirements. NCUA plans to issue this companion guidance well after the comment period for this proposed rule has ended, and, according to NCUA staff, stakeholders will not have the opportunity to comment on the guidance. When CUNA has requested to comment on important guidance, NCUA leadership and staff have repeatedly stated the Administrative Procedures Act does not require public comment for guidance. This absence of a requirement does not preclude NCUA from opening the guidance to public comment; in fact, the NCUA has discretion to allow or not to allow public comment on guidance. We point to NCUA's 2011 proposed interest rate risk rule where NCUA included guidance in a proposed rule for public comment as precedent of the issuance of important guidance with a rule. We strongly urge NCUA to permit stakeholder comment on the supervisory guidance and believe this could be accomplished without delaying the implementation of the final rule.

Our second concern also stems from the present uncertainty related to supervisory guidance. Some credit unions have voiced concern that the principles-based approach in the proposed rule could complicate management of an MBL program because the proposed rule would shift to credit unions the responsibility to develop a commercial lending program that is safe and sound and meets examiner approval. Without guidance, the amount of detail NCUA will give credit unions on how to construct and operate a safe and sound lending program is unclear. NCUA could alleviate these concerns by specifying *minimum* acceptable requirements, which credit unions looking for a simple commercial lending program could incorporate into a commercial lending policy that would automatically receive examiner approval. In adopting this approach, it would be important for the rule and accompanying guidance to emphasize such a "safe harbor" policy is not the standard from which deviations would be considered unusual or extraordinary. We urge NCUA to address this concern when finalizing the proposal.

NCUA Can – and Should – Go Much Further Than This Proposal to Remove Barriers to Credit Union Small Business Lending

The proposed MBL rule represents a good first step to effective policymaking, but the NCUA can – and should – do more. H.R. 1151, the Credit Union Membership Access Act of 1998 (CUMAA), amended the FCUA by placing an aggregate limit on a federally insured credit union's MBLs. CUMAA limited a credit union's total amount of outstanding MBLs to 1.75 times the credit union's net worth, up to the amount of net worth required to be well capitalized under Prompt Corrective Action (PCA). CUMAA did provide two exceptions to the MBL cap. It is clear from a plain reading of the FCUA that NCUA can go further by defining the parameters of this exemption, which is further supported by the legislative history of H.R. 1151.[1] The language of 12 U.S.C. § 1757a(b) states, in part, the following:

> Subsection (a) of this section does not apply in the case of— (1) an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the Board…

The plain language provides for two exceptions: (1) An insured credit union chartered for the purpose of making MBLs to its members; or (2) An insured credit union that has a history of primarily making MBLs to its members.

It appears that NCUA does not have criteria or has not made the criteria public as to what constitutes a credit union that is "chartered for the purpose of making" MBLs. NCUA should develop a process where a credit union could amend its charter to provide as one of its purposes "member business lending" and thus qualify for the exception. A credit union requesting this type of charter amendment would likely be near the statutory MBL cap and would be truly operating for the purpose of making MBLs. The statutory language does not use the word "primarily" for this exception as is used for the "has a history" exception. Thus, it is a reasonable interpretation to allow a credit union that makes business loans as its purpose to exceed the cap, under some criteria.

In addition, the exception for credit unions with a "history of primarily making member business loans" has not been reviewed since the inception of the regulation. We note that the FCUA does not require the NCUA to set a credit union's history contemporaneously with the passage of the CUMAA. NCUA could provide that a credit union that has originated or granted a threshold amount of MBLs over a significant period could qualify for the exemption. This would qualify as having a history of primarily making member business loans. The legislative history of H.R. 1151 supports this interpretation, encouraging the Board to permit worthy projects access to affordable credit union financing.[2] Loans for such purposes as agriculture, self-employment, small business establishment, large upfront investment or maintenance of equipment should not be unduly constricted as a result of the NCUA Board's action or inaction in defining such terms as "history of primarily making" or "chartered for the purpose of making."

Elimination of Waivers

The current MBL rule contains many prescriptive requirements not required by the FCUA. Because these restrictions are in many cases more restrictive than is warranted by safety and soundness concerns, NCUA has given credit unions the ability to receive a waiver from many of them. However, CUNA's member credit unions have told us the waiver process can be time consuming and burdensome, and often leads to credit unions being uncompetitive with other financial institutions that do not have these restrictions. Also, there is a degree of uncertainty when applying for a waiver that might cause credit unions to avoid even considering making an MBL due to the time and expense associated with applying for a waiver when there is no guarantee one will be granted.

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[1] *See* S. Rep 105-193.
[2] *See Id*.

CUNA strongly supports the elimination of all prescriptive requirements necessitating waivers. Eliminating these requirements should provide much needed relief from the regulatory hurdles imposed on credit unions. Unfortunately, one requirement remains in place for which waivers should remain available: the limitation that the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not exceed 15 % net worth or $100,000, whichever is greater. Credit unions can currently receive a waiver from this requirement; however, this waiver would not be available under the proposed rule. This requirement has an outsized impact on small credit unions as well as larger credit unions that have an associated borrower on several loans. NCUA should eliminate this provision, as it is prescriptive, or continue to allow credit unions to apply for waivers from the requirement.

MBL Cap Calculation

CUNA supports the proposed change to the MBL cap calculation. The proposal would replace the current expression of the MBL cap as 12.25% of assets with a cap expressed as 1.75 times the amount of net worth up to the amount of net worth required to be well capitalized, as required by the FCUA. The 12.25% of assets language is not part of the FCUA. The current minimum capital requirement for a credit union to be well capitalized is 7% of total assets, hence the current shorthand of 12.25% of assets (1.75 times 7%). However, if the current version of NCUA's proposed Risk-Based Capital (RBC) rule is adopted, the amount of capital required to be well capitalized will be the greater of 7% of total assets or 10% of risk assets.

Some commenters have incorrectly suggested this change would effectively raise the MBL cap from 12.25% of assets to 17.5% of assets (1.75 times 10%). This would only be the case if risk assets equaled total assets. Actually, for the vast majority of credit unions, under the RBC proposal risk assets would amount to less than 70% of total assets, so that the 7% of total assets requirement would exceed 10% of risk assets. For all of these credit unions, the calculated cap would remain 12.25% of assets.

This correction of the specification of the MBL cap would have almost no effect on the aggregate cap, but it would provide modest relief to a few credit unions. Of the 1,501 business lending credit unions subject to the cap,[3] only 111 have risk assets exceeding 70% of total assets. These credit unions would thus have an MBL cap exceeding 12.25% of assets if the proposed RBC rule is adopted as proposed. Of these 111 credit unions, only one would experience an increase to more than 17.5% of total assets (to 18.28%). Two would have cap increases to between 15% and 16% and five would have new caps between 14% and 15%. The remaining 103 affected credit unions would have cap increases of less than 2% of assets, to between 12.25% and 13.8% of assets. For the other 1,390 business lending credit unions subject to the statutory cap, the cap would remain at 12.25% of assets.

The average MBL cap at the 111 affected credit unions would be 12.78% of assets, an increase of only one-half a percent (0.53%) of assets. Considering all credit unions not exempt from the cap, the average cap expressed as a percentage of assets would be 12.31%, a negligible increase of only six basis points.

[3] Another 721 credit unions offer MBLs but are not subject to the cap due to having a low-income designation or being grandfathered.

Definitions

The proposed rule would amend and add the following definitions to § 723.2:

Associated Borrower, Common Enterprise, Control, and *Direct Benefit:*

The definitions of *Associated Borrower, Common Enterprise, Control,* and *Direct Benefit* are all intertwined and being revised to bring the definitions in line with other banking regulatory standards, generally mirroring the combination rule (*See* 12 CFR 32.5). CUNA supports bringing the "Associated Member" concept in line with federal bank regulation; however, we note the special treatment rules for partnerships, joint ventures, and associations were not included in the definition. NCUA should consider incorporating the special rule for partnerships, joint ventures, and associations as this would bring greater clarification to certain relationships that may or may not fall under the rule.

Loan-to-Value Ratio:

This definition is revised to clarify that junior debt from other lenders **does not** need to be included in calculating loan-to-value (LTV) ratios, and further clarifies the valuation basis for collateral. CUNA and the industry have requested this change on numerous occasions as it brings LTV calculations in line with customary commercial loan calculations. CUNA supports this much-needed change.

With respect to the requirement to use the "lesser of purchase price or market value for collateral held 12 months or less," CUNA suggests NCUA provide some flexibility on this standard because there are several situations where this standard is either unreasonable or unworkable. This is particularly true where there have been non-purchase transactions which require a thorough understanding of the credit's dynamics and a "one size fits all" rule can be problematic and have undesired consequences.

First, several states are considered "non-disclosure" states where the consideration of a property transfer is not publicly available or readily ascertainable. Further, in some states the consideration indicated on a publicly recorded deed may not reflect the actual price or value paid in a transaction or be representative of the transferee's purchase price. In such cases, an LTV calculation based on the "lower of purchase price or market value" will be misleading, often with the effect of overstating the actual LTV. Examples might include property acquired as a gift or inheritance, or as a result of a variety of other non-market transactions.

While we appreciate that the 12-month standard is being considered out of concern over the reliability of appraisals, a better approach is to suggest that credit unions use robust appraisal review and underwriting processes to manage risk. The LTV calculation will create an unfair disadvantage for credit unions and cause unnecessary administrative burdens. We agree a level of "skin in the game" by the borrower is an important part of evaluating a credit transaction, but the blanket LTV rule for non-purchase transactions is not necessarily the best approach.

Commercial Loan:

The FCUA's statutory business lending restrictions are not safety and soundness restrictions. These MBL restrictions were included in the CUMAA to address political concerns raised by bank trade associations regarding business lending competition from credit unions. Nevertheless, NCUA's current business lending regulation bases many of the agency's safety and soundness policies unnecessarily on loans defined as MBLs for purposes of the statutory cap. The proposed rule would create a new definition of commercial loan in § 723.2. With this definition, the MBL regulation would separate loans meeting the proposed § 723.2 commercial loan definition from loans meeting the 12 U.S.C. 1757a statutory MBL definition, therefore more appropriately applying business lending safety and soundness requirements only to business loans.

Although many commercial loans in the proposed § 723.2 would overlap with statutorily defined MBLs, separating the two types of loans is important, because the proposed regulation decouples safety and soundness from statutory restrictions. We support this proposed change as it shifts NCUA's focus to safety and soundness for commercial loans instead of relying on statutory restrictions for safety and soundness.

CUNA also supports the seven categories of loans excluded from the commercial loan definition; however, more types of loans should be exempt from the definition, including loans that present zero or only a remote risk of loss to a credit union. For example, loans fully guaranteed by a federal or state agency should also be excluded from the commercial loan definition because they are risk free and thus do not present any safety and soundness concerns.

Furthermore, NCUA should clarify the treatment for those loans that are partial cash-secured loans, since the definition as written suggests the loan must be "fully" secured by shares or deposits. The portion that is partially secured should fall within the exception for purposes of the cap. The 5300 forms will need to be amended for the reporting on this subject as well.

Credit Risk Rating System:

Credit Risk Rating System is defined in the proposed rule as a formal process that identifies and assigns a relative credit risk score to each commercial loan in a portfolio. It is to be determined through an evaluation of quantitative factors based on financial performance and qualitative factors based on management, operational, market, and business environmental circumstances. CUNA supports NCUA's goal of ensuring sound underwriting practices and managing risk appropriately for the credit union. CUNA agrees the use of a Credit Risk Rating System is useful in this regard and does not object to the requirement, and notes that NCUA acknowledges over 90 percent of credit unions already have systems for their commercial loans. CUNA requests, however, that NCUA should allow some flexibility to credit unions in determining where such a system should reside in their policies. The proposed rule, as drafted, requires the system to exist in the commercial loan policy. Many credit unions may choose to include it in other policies, such as an enterprise risk management process, or otherwise include it as part of the overall holistic management of the portfolio risk. Therefore, CUNA requests some flexibility with the locus of the credit risk rating system.

CUNA also notes the definition requires the use of an "ordinal number" to represent the degree of risk. This suggests that only the use of a natural number or integer for a risk score would satisfy the rule. A credit union may wish to use a "Low/Medium/High" designation, grade loans as "A, B, C, D", or "Red Light, Yellow Light, Green Light" for purposes of rating the risk, all of which would serve the same purpose and accomplish the same goal. NCUA should provide flexibility in this regard.

Loan Secured By a 1- to 4- Family Residential Property:

CUNA supports the change clarifying that loans secured by a 1- to 4- family residential property are not commercial loans for purposes of the rule. Excluding these loans from the definition of commercial loan is important because credit unions that would otherwise not make commercial loans would be required to have a commercial lending policy and additional board responsibilities if these were considered commercial loans.

Residential Property:

This definition clarifies that loans secured by a 1- to 4- family residential property are excluded from the definition of a commercial loan. CUNA supports this change.

Board of Directors and Management Responsibilities

Proposed § 723.3 would place the ultimate responsibility for a safe and sound commercial lending program on a credit union's board of directors. Whereas that may be appropriate in principle, this section is more prescriptive with respect to credit union board requirements than the current § 723.5 that it would replace. The proposed board requirements would require boards to be much more involved in the details of a credit union's commercial lending program. Some credit unions have voiced concern these additional board duties could make developing and running a commercial lending program more burdensome because of the increased reliance on volunteer boards for approval and monitoring of all aspects of a program.

Although CUNA supports this proposed rule, we are concerned the proposed § 723.3 could require too much ongoing supervision from volunteer credit union boards. Furthermore, without guidance to review with this section, credit unions will not know the true burden a board would face in the supervision of a commercial lending program. These additional board responsibilities may also cause credit union boards to become overly involved in operations instead of setting policies for management to execute.

In addition, CUNA supports the elimination of the specific two-year staff experience requirement. This requirement is replaced with requirements for different levels of staff to have experience in the areas of managing commercial lending staff, underwriting and processing loans, overseeing and evaluating performance, and conducting collection and loss mitigation activities. While management should have experience in all three areas, the staff will not necessarily have this particular experience. For example, a credit analyst will not have, nor need, training for collections in order to effectively perform their duties. The final rule and guidance should clarify this point.

CUNA also believes experience requirements can be met by a third party or third parties. Credit unions often rely on third parties to outsource experience and other needs that might not be necessary or cost effective to have in-house.

Commercial Loan Policy

The proposed § 723.4 requirements are more detailed than NCUA's current MBL policy requirement in § 723.6. Prior to engaging in commercial lending, a federally insured credit union must adopt and implement a comprehensive written commercial loan policy and establish procedures for commercial lending. This section, in conjunction with the requirements in § 723.3, details a board's duties in the operation of a credit union's commercial lending program.

Even though the proposal eliminates most of the current rule's specific limits, these limits could still very likely be imposed by examiners as policy limitations. Instead of relying on statutory limitations, a credit union board will be responsible for developing and defending to examiners their credit union's policy on LTV ratios, minimum equity investments, portfolio concentration limits for types of loans, and personal guarantees.

NCUA has stated the proposal will give credit unions the ability to adopt commercial lending standards and a commercial lending program that best meets their members' needs. The difference is by requiring credit unions to incorporate their own limitations in a commercial lending policy, credit union staff and their boards could have more stringent limitations than what is required by the current statute if NCUA examiners elect to hold credit unions to a higher standard. Furthermore, some credit unions may adopt more stringent standards than what are required now out of fear of excessive scrutiny from NCUA examination staff.

Further, the proposed requirements of § 723.4(f)(3) that require a projected balance sheet and income and expense statements may be appropriate for construction and improvement loans, however, in many real estate purchase loans, projected balance sheets are not necessary. We recommend amending the language to read as follows: "Projected income and expense or other projections commensurate with the particular transaction type should be obtained."

Small Credit Union Exemption

CUNA supports an exemption for credit unions that hold a de minimis number and amount of commercial loans. The proposal, however, would exempt a credit union from these risk management policy and infrastructure requirements only if the credit union has both assets less than $250 million and total commercial loans less than 15% of net worth. We understand and support NCUA's intention to provide regulatory relief for small credit unions. Nevertheless, we think the asset size threshold is unnecessary and not a good proxy for determining the risk of a credit union with a de minimis number in amount and size of commercial loans.

CUNA recommends making this exemption open to all credit unions through a de minimis commercial loan exemption. This could be accomplished by removing the $250 million asset requirement from § 723.1(b) and coupling it with the 15% hard cap on the net worth limitation. By removing the asset requirement for the exemption, larger credit unions that meet the other requirements of the exception, but only have a minimal engagement in commercial lending relative to their net worth and assets, would also receive regulatory relief.

Collateral and Security

CUNA supports the proposed § 723.5 which would eliminate the personal guarantee requirement. Currently, § 723.7 requires a personal guarantee or a waiver from a regional director. This requirement is cumbersome and time consuming and even if granted, hampers a credit union's ability to offer commercial loans.

The proposed section would not give credit unions carte blanche to make commercial loans without a personal guarantee; instead, it would allow credit unions to make loans without a personal guarantee when it is reasonably prudent to do so. Our concern here again stems from the lack of the issuance of contemporaneous guidance from the NCUA. There is uncertainty as to which situations a credit union would be permitted to make a loan without a personal guarantee. A credit union could now be subject to potential examiner criticism when it makes a loan without a personal guarantee. CUNA also requests NCUA to provide more detail on the action the agency will take if a loan made without a personal guarantee is deemed by an examiner to be imprudent.

Construction and Development Loans

CUNA supports the NCUA's amendments to the C&D requirements. These changes should make these requirements more consistent with the expectations of commercial borrowers and thus help credit unions effectively provide loans to their members.

State Chartered Credit Unions

The NCUA has requested comments on three options to transition existing regulatory schemes maintained by seven states that currently have NCUA Board-approved MBL rules. Option A would grandfather existing state adopted regulatory schemes but not allow for any future approval for other states. Option B would require existing states to resubmit existing schemes to the NCUA with conforming amendments if necessary. Option B would further allow for new state MBL rules by other states that conform to the new rules but could be more restrictive if the state so choses. Option C would grandfather existing state MBL rules and permits other SSAs to submit their own state rules for consideration so long as they conform with the current § 723.20.

CUNA has always strongly supported the autonomy of state regulators as part of a vibrant dual chartering system. Thus, providing states with the greatest flexibility to adopt rules appropriate to their local region is the most favorable approach. Most SSAs have been cognizant of maintaining regulatory equivalence with federally chartered credit unions and we believe they can and will make appropriate decisions for state-chartered credit unions while striving to maintain safety and soundness principles. NCUA should allow this authority to continue.

Option C, therefore, is the best option to provide maximum flexibility for states in this regard. It allows states to continue with their existing schemes and will ease the transition while maintaining federally insured state chartered credit unions (FISCUS) in compliance with existing law. It would also allow a mechanism for states to update their scheme if they deem it appropriate and for new states to adopt their own schemes if they so choose.

Finally, CUNA encourages NCUA to maintain the existing § 723.20(c) which allows for a transition back to the NCUA's rule in the event a state rescinds its existing rule.

Examination

Credit unions have expressed concern to CUNA regarding the future commercial loan examination process. These credit unions understand the proposed rule and can even develop a commercial lending program without the necessary guidance that NCUA has not published for public comment. However, the potential for inexperienced examiners second guessing loan decisions, credit union policies and other business decisions concerns many credit unions.

Examination consistency is an additional concern for many credit unions. Today, many of our members believe examiners receive and apply inconsistent safety and soundness guidance. With many aspects of a commercial lending program being subjectively reviewed, credit unions fear they may be subjected to the application of differing "rules" from one examination to another based on individual examiner opinion.

NCUA staff acknowledges the agency will need to train and hire additional staff to examine credit unions making commercial loans. Having qualified examiners review commercial loans is paramount to the success of the proposed MBL regulation because examiners will be unable to rely on the regulation for requirements and will need to have a thorough understanding of commercial lending to properly evaluate and examine non-uniform commercial lending programs. CUNA strongly encourages consistent training and guidance for these examiners given their significant role in the process. In addition, especially during the first few years after implementation, there should be ample supervision by senior NCUA staff of examiners' reviews of credit union commercial lending policies. Credit unions should be able to elevate policy disagreements up the chain without initiating a formal procedure.

Our state-chartered members have also expressed concern with examiner training for state supervisory authorities. State examiners will also need to have specialized training and be able to fully understand the MBL regulation and commercial lending. Without the proper training of state examiners, the principles based approach could result in less flexibility for state-chartered credit unions.

Implementation

CUNA appreciates that NCUA plans an 18-month delayed implementation period for the requirements in the proposed MBL rule. Both credit unions and the NCUA will require adequate time to fully implement the new requirements. However, a more effective approach would be to allow credit unions to comply with the new provisions earlier than 18 months if the credit union has satisfied the new requirements. This approach would allow for credit unions that wish to meet the new requirements to do so earlier, and would give the NCUA a head start on approving policies and examining based on the new regulatory requirements.

Cost

NCUA has indicated the implementation of the requirements in the proposed MBL rule would cost the agency approximately $1.9 million. This would be primarily a one-time cost for specialized training for examiners before implementing the rule. We urge NCUA to find these funds by increasing efficiencies in other areas. For example, NCUA could find the funds by wringing out inefficiencies in the examination process. This could be accomplished by modernizing examination procedures and reducing the examination burden on well-performing credit unions, which would allow NCUA to deploy these resources to modernize its examination procedures for the requirements in this proposed MBL regulation.

Conclusion

Many of the provisions of the proposed rule could ultimately enable credit unions to operate more efficient and robust commercial lending programs; however, without the ability to review and comment on the guidance, CUNA and credit unions cannot completely evaluate and project the impact it will have on them. Nevertheless, credit unions are willing to push forward with this approach as the current rule magnifies the stifling MBL restrictions in the FCUA by placing many unnecessary burdens on credit unions seeking to provide commercial loans to members. Notwithstanding the concerns we have raised herein, CUNA supports this proposed rule and applauds NCUA for this approach.

Thank you for the opportunity to express our views. If you have any questions about our comments, please do not hesitate to contact me.

Sincerely,

J. Lance Noggle

J. Lance Noggle
Senior Director of Advocacy and Counsel